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DEPARTMENT OF COMMERCE

International Trade Administration

C-570-980

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Court of International Trade (CIT or Court) sustained the final results of redetermination pursuant to remand pertaining to the administrative review of the countervailing duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (China) covering the period of review (POR) January 1, 2013, through December 31, 2013. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review and that we are amending the final results with respect to the total *ad valorem* countervailable subsidy rate assigned to JA Solar Technology Yangzhou Co., Ltd. and its cross-owned affiliates (collectively, JA Solar), Changzhou Trina Solar Energy Co., Ltd. (Trina Solar), and Wuxi Suntech Power Co., Ltd. (Wuxi Suntech).

DATE: Applicable April 6, 2018.

FOR FURTHER INFORMATION CONTACT: Kaitlin Wojnar at (202) 482-3857, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2016, Commerce published the *Final Results*.¹ Two parties, SolarWorld Americas, Inc. (SolarWorld) and Trina Solar, contested Commerce's findings in the *Final Results*. SolarWorld is a U.S. producer of solar cells and was the petitioner in the CVD investigation of solar cells from China. Trina Solar is a Chinese producer/exporter of solar cells, which participated as a non-individually examined respondent in the underlying administrative review.² Wuxi Suntech and JA Solar were not parties to this litigation. However, Wuxi Suntech also participated as a non-individually examined respondent in the underlying administrative review,³ and JA Solar was the only individually examined company respondent in the underlying administrative review.⁴ In the *Final Results*, Commerce calculated a countervailable subsidy rate of 19.20 percent for JA Solar, which was also assigned to Trina Solar and Wuxi Suntech.⁵

On August 18, 2017, the CIT remanded the *Final Results* to Commerce.⁶ In particular, the Court instructed Commerce to further explain or reconsider its method of calculating a benchmark price to measure the adequacy of remuneration for solar glass.⁷ In accordance with the ruling, Commerce issued its Remand Redetermination, in which it further explained its benchmark determination and corrected an error in the calculation of that benchmark.⁸ As a result of the corrected error, Commerce revised the countervailable subsidy rates for JA Solar,

¹ See *Final Results of Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, 81 FR 46904 (July 19, 2016) (*Final Results*), and accompanying Issues and Decision Memorandum.

² See *Final Results*, 81 FR at 46905.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 17-106, Court No. 16-00157 (CIT 2017) (*Trina Solar*).

⁷ *Id.* at 3.

⁸ See Commerce Memorandum, "Changzhou Trina Solar Energy Co. v. United States, Court of International Trade Consolidated Court No. 16-00157: Final Results of Redetermination Pursuant to Remand," November 30, 2017 (Remand Redetermination).

Trina Solar, and Wuxi Suntech to 24.66 percent.⁹ On March 27, 2018, the CIT sustained Commerce’s Remand Redetermination in full,¹⁰ thereby affirming a 24.66 percent countervailable subsidy rate for JA Solar, Trina Solar, and Wuxi Suntech.

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s March 27, 2018 final judgment sustaining the Final Redetermination constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the *Timken* publication requirements. Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the countervailable subsidy rate assigned to JA Solar, Trina Solar, and Wuxi Suntech. Based on the Remand Redetermination, as affirmed by the CIT, the revised countervailable subsidy rates for JA Solar, Trina Solar, and Wuxi Suntech for the period January 1, 2013, through December 31, 2013, are as follows:

⁹ *Id.*

¹⁰ See *Changzhou Trina Solar Energy Co., Ltd. v. United States*, Slip Op. 18-31, Court No. 16-00157 (CIT 2018).

¹¹ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Producer/Exporter	Subsidy Rate
JA Solar Technology Yangzhou Co., Ltd. ¹³	24.66 percent
Changzhou Trina Solar Energy Co., Ltd.	24.66 percent
Wuxi Suntech Power Co., Ltd.	24.66 percent

In the event that the CIT's rulings are not appealed or, if appealed, are upheld by a final and conclusive court decision, Commerce will instruct Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised countervailing duty rates listed above.

Cash Deposit Requirements

Since the *Final Results*, Commerce has established a new cash deposit rate for Trina Solar and Wuxi Suntech.¹⁴ Therefore, this amended final determination does not change the later-established cash deposit rates for Trina Solar and Wuxi Suntech. JA Solar does not have a superseding cash deposit rate and, therefore, Commerce will issue revised cash deposit instructions to CBP, adjusting the cash deposit rate for JA solar to 24.66 percent, effective April 6, 2018.

¹³ Commerce found JA Solar Technology Yangzhou Co., Ltd. to be cross owned with the following companies: JingAo Solar Co., Ltd.; JA Solar Technology Yangzhou Co., Ltd.; Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; Donghai JA Solar Technology Co., Ltd.; JA (Hefei) Renewable Energy Co., Ltd.; Hefei JA Solar Technology Co., Ltd.; Solar Silicon Valley Electronic Science and Technology Co., Ltd.; Hebei Ningjin Songgong Semiconductor Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Ningjin Songgong Electronic Materials Co., Ltd.; JingLong Industry and Commerce Group Co., Ltd.; Ningjin Guiguang Electronic Investment Co., Ltd.; Yangguang Guifeng Electronic Technology Co., Ltd.; Ningjing Jingxing Electronic Materials Co., Ltd.; Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; Jingwei Electronic Material Co., Ltd.; Ningjin Changlong Electronic Materials Manufacturing Co.; Ningjin Jingfeng Electronic Materials Co., Ltd.; Ningjin County Jingyuan New Energy Investment Co., Ltd.; Xingtai Jinglong Electronic Materials Co., Ltd.; Hebei Yujing Electronic Science and Technology Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; and Ningjing Sunshine New Energy Co., Ltd. See *Final Results*.

¹⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 32678, 32680 (July 17, 2017).

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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